Azman bin Abdul Jalil v Ketua Polis Negara & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S4–21–174–OF 2000
HELILIAH J
1 DECEMBER 2008

Administrative Law — Exercise of administrative powers — Dismissal from service — Police Inspector — Declaration — Rules of natural justice — Oral hearing, failure to accord — Whether breach of procedural fairness and natural justice — Whether dismissal null and void — Public Officers (Conduct and Discipline) Regulations 1993 reg 28

Administrative Law — Natural justice — Rules of natural justice — Oral hearing, failure to accord — Whether rules of natural justice breached — Whether dismissal of police officer justified — Federal Constitution art 135(1)

The plaintiff was claiming for a declaration that his dismissal from the Royal Malaysian Police Force was unconstitutional, unlawful, void and of no effect and that he was still an Inspector of Police in the Royal Malaysian Police Force and entitled to all the salaries, emoluments and benefits due as such to an Inspector of Police. The disciplinary committee found the plaintiff had violated reg 4(2)(d) of the Public Officers (Conduct and Discipline) Regulations 1993 ('Regulations') whereby he had acted in such manner as causing to tarnish the name of the public services. The plaintiff was alleged, inter alia, to have had an intimate secret relationship with one Hamidah bte A Ghani between middle of 1998 until February 1999 even though he, at that material time, already had a wife. The plaintiff had subsequently married the abovenamed without first obtaining the prior approval of the Chief of the Department as required by the order of the Inspector General of Police 39/37. The plaintiff was also found to have failed to declare several assets. The issue posed before the court was whether the procedure leading to the dismissal of the plaintiff was in accordance with the rules of natural justice or procedural fairness. The plaintiff alleged that he had not been given a reasonable opportunity to be heard and that the charges against him were patently false.

Held, dismissing the plaintiff's application with costs:

(1) This was not a case where an inquiry was conducted and oral

representations were made. In exh P1, the letter had made specific reference to reg 28 where it was stated that the IGP had received a report from a disciplinary committee and after considering the report the IGP had found that the plaintiff should be subjected to disciplinary action with the intention of preferring the punishment of dismissal under reg 28 of the Regulations. In exh P2, the plaintiff had also made a clear reference to reg 28 wherein he had stated in its original text that he clearly understood the contents whereby a disciplinary action with the purpose of carrying out the punishment of dismissal under reg 28 could be preferred against him (see para 12).

(2) Exhibit P2, a letter written by the plaintiff in his own words said, inter alia, that he understood the contents of exh P1. There was no suggestion that he had misunderstood the charges where he gave a long explanation about his relationship with his former wife whom he had divorced in 1999. Exhibit P2 clearly indicated that the plaintiff comprehended the matters that were put before him. The contention that he was confused was therefore negated (see para 21 & 28).

(3) There was no evidence before this court to show that there was anything that would render the procedure undertaken by the first and second defendants to be not in accordance with the requirements of regs 28(1), (2) and (3). Further, on the evidence, the court was not to step into the shoes of the authority to determine that a committee of inquiry should be constituted to get further clarification when the plaintiff tendered exhs P5 and P6. DW2 had himself explained the reasons why he could not take into account exhs P5 and P6 namely that he had before him sufficient material to enable him to make a decision. The court was not in a position to put itself in the shoes of the disciplinary authority to state that the reasons given by the plaintiff were adequate for the purpose of the charges preferred against him (see para 29).

[Bahasa Malaysia summary

Plaintif menuntut deklarasi bahawa pemecatannya daripada Angkatan Polis DiRaja Malaysia adalah tidak berperlembagaan, menyalahi undang-undang, tidak sah dan tidak berkuat kuasa dan bahawa dia masih seorang Inspektor Polis dalam Angkatan Polis DiRaja Malaysia dan berhak terhadap kesemua gaji, emolumen dan faedah tertunggak yang layak untuk seorang Inspektor Polis. Jawatankuasa tatatertib mendapati plaintif telah melanggar peraturan 4(2)(d) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Peraturan') di mana dia telah bertindak sedemikian rupa sehingga menyebabkan nama baik perkhidmatan awam terjejas. Plaintif dikatakan, antara lain, telah mengadakan hubungan intim secara sulit bersama seorang bernama Hamidah bte A Ghani antara pertengahan tahun 1998 hingga bulan

Februari 1999 meskipun dia, pada masa matan, telahpun beristeri. Plaintif kemudian telah berkahwin dengan wanita tersebut tanpa terdahulu mendapatkan persetujuan ketua jabatan seperti yang dikehendaki oleh perintah Ketua Polis Negara 39/37. Plaintif juga didapati telah gagal mengisytiharkan beberapa asetnya. Persoalan yang dikemukakan di mahkamah adalah sama ada prosedur yang membawa kepada pemecatan plaintif adalah menurut rukun hak asasi atau prosedur keadilan. Plaintif mengatakan bahawa dia tidak diberikan peluang munasabah untuk didengar dan bahawa pertuduhan-pertuduhan terhadapnya ternyata palsu.

Diputuskan, menolak permohonan plaintif dengan kos:

(1) Ini bukan kes di mana satu siasatan telah diadakan dan representasi secara lisan dibuat. Dalam eksh P1, surat tersebut merujuk secara spesifik kepada peraturan 28 di mana dinyatakan bahawa KIP telah menerima laporan daripada jawatankuasa tatatertib dan setelah mempertimbangkan laporan KIP mendapati plaintif patut dikenakan tindakan tatatertib dengan niat mengenakan hukuman pemecatan di bawah peraturan 28 Peraturan. Dalam eksh P2, plaintif juga jelas merujuk kepada peraturan 28 yang mana dia menyatakan dalam teks asalnya bahawa dia memahami dengan jelas kandungannya di mana tindakan tatatertib dengan tujuan melaksanakan hukuman pemecatan di bawah Peraturan 28 boleh dikenakan terhadapnya (lihat perenggan 12).

(2) Ekshibit P2, surat yang ditulis oleh plaintif dalam perkataannya sendiri menyatakan, antara lain, bahawa dia memahami kandungan eksh P1. Tiada cadangan bahawa dia tidak memahami pertuduhan yang mana dia telah memberikan penjelasan yang panjang lebar tentang hubungannya dengan bekas isterinya yang telah diceraikan pada tahun 1999. Ekshibit P2 jelas menunjukkan bahawa plaintif memahami perkara-perkara yang dikemukakan kepadanya. Hujah bahawa dia keliru oleh itu tidak diterima (lihat perenggan 21 & 28).

(3) Tiada keterangan di hadapan mahkamah ini untuk menunjukkan bahawa terdapat suatu yang menyebabkan prosedur yang dilaksanakan oleh defendan-defendan pertama dan kedua bukan menurut keperluan peraturan 28(1), (2) dan (3). Bahkan, berdasarkan keterangan, mahkamah tidak patut berperanan sebagai pihak berkuasa untuk menentukan bahawa satu jawatankuasa siasatan patut dibentuk untuk mendapatkan penjelasan selanjutnya apabila plaintif mengemukakan eksh P5 dan P6. DW2 sendiri telah menjelaskan alasan kenapa dia tidak mengambilkira eksh P5 dan P6 iaitu bahawa dia mempunyai bahan mencukupi untuk membolehkannya membuat keputusan. Mahkamah bukan dalam kedudukan untuk meletakkan dirinya sebagai pihak

berkuasa tatatertib untuk menyatakan bahawa alasan-alasan yang diberikan oleh plaintif adalah memadai bagi tujuan pertuduhan-pertuduhan tersebut dikenakan terhadapnya (lihat perenggan 29).]

Notes

For a case on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) para 229.

For cases on dismissal from service, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 36–42.

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 2 MLJ 131; [2002] 1 CLJ 493, CA (refd)

Chai Kok Choi v Ketua Polis Negara & Ors [2008] 1 MLJ 725; [2008] 1 CLJ 113, FC (refd)

Inspector General of Police & Anor v Alan Noor bin Kamat [1988] 1 MLJ 260; [1987] 1 LNS 101, SC (refd)

Ketua Pengarah Kastam v Ho Kwan Seng [1977] 2 MLJ 152, FC (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang v Utra Badi a/l K Perumal [2001] 2 MLJ 417, FC (refd)

Ng Hock Cheng v Pengarah Am Penjara & Ors [1998] 1 MLJ 153, FC (folld)

Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1; [2008] 6 CLJ 573, FC (refd)

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308; [1995] 1 CLJ 619, CA (refd)

Legislation referred to

Evidence Act 1950 s 65(1), 65(1)(a)(i), (ii)

Federal Constitution art 135(2)

Public Officers (Conduct and Discipline) Regulations 1993 regs 28, 28(1), (2), (3), 38

Aris Rizal Christopher Fernando (Marisa Regina & Faiz Fadzil with him) (Aris Rizal Christopher Fernando) for the plaintiff.

Mat Ghani Abdullah (Suzanna Atan and Effendi Nazila Abdullah with him) (Senior Federal Counsel, Attorney General's Chambers) for the defendants.

Heliliah bt Mohd Yusof J:

[1] In this suit the plaintiff's claim is for a declaration that the plaintiff's dismissal from the Royal Malaysia Police Force (or PDRM) is unconstitutional, unlawful, void and of no effect and that the plaintiff is still

an Inspector of Police in the Royal Malaysia Police Force and entitled to all the salaries, emoluments and benefits due as such to an Inspector of Police. Should he succeed he also claims that an enquiry be held to determine the salaries, emoluments and other benefits due to him. There is also a claim for damages.

[2] In his statement of claim the plaintiff has stated that at the material time he was an Inspector of Police in the PDRM and hence in the employment of the second defendant. The plaintiff was informed by a letter dated 3 April 2000 from the first defendant of the intention to dismiss the plaintiff from the PDRM and the plaintiff was directed to show cause why he ought not to be dismissed.

[3] For the purposes of this proceeding the full text of exh P1 namely the letter of 3 April 2000 is produced verbatim in its translated version while the original version is in Bahasa Malaysia, as follows:

CHIEF INSPECTOR OF POLICE – I/11891 AZMAN BIN ABDUL JALIL

Through: Inspector General of Police SELANGOR

DISCIPLINARY ACTION UNDER REGULATION 28 OF PUBLIC OFFICERS (CONDUCT AND DISCIPLINE) REGULATIONS 1993

I am ordered to inform you that a report has been received by the Disciplinary Committee that is the Inspector General of Police regarding your behavior.

2 In carrying out the duties entrusted to him by the Police Services Commission through PU [B] 621 dated 9 December 1985 and [Amendment] PU [B] 251 dated 18 May 1989 the Inspector General of Police after considering this report has found that you should be subject to disciplinary action with the intention of preferring the punishment of dismissal under reg 28, Public Officers (Conduct and Discipline) Regulations 1993, on each of the eight grounds as listed below:

2.1 FIRST GROUND

That you as an officer that is Chief Inspector of Police in the Royal Police Force of Malaysia and serving as a Disciplinary Officer at the Kelang Police Head Quarters was found to be acting in such manner causing to tarnish the name of the public services that is by you having an intimate secret relationship with Hamidah bte A Ghani KP: 741126-10-5296 between middle of 1998 until February 1999 even though you at that time already had a wife. Therefore you have breached 4[2][d] Public Officers (Conduct and Discipline) Regulations 1993 as stated below:-

4[2] An officer shall not —

[d] act in such manner so as to tarnish the name or smear the name of the Public Services.

2.2 SECOND GROUND

That you as an officer that is Chief Inspector of the Royal Police Force of Malaysia and serving as a Disciplinary Officer, at the Kelang Police Head Quarters, Selangor have been found disobeying an order that is on 19 June 1999 married a Malay woman named Hamidah bte A Ghani KP: 741126-10-5296 before obtaining approval from the Chief of the Department the Order of the Inspector General of Police 39/37 dated 30 May 1977. Therefore you have breached reg 4[2][i] Public Officers (Conduct and Discipline) Regulations 1993 which goes as follows:-

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

2.3 THIRD GROUND

That you as an officer that is Chief Inspector of the Royal Police Force of Malaysia and serving as the Disciplinary Officer, at the Kelang Police Head Quarters, Selangor was found acting in such manner so as to compromise the integrity of the force when on the night of 5.6.98 until 0700 hrs 6 June 1998 was with another man's wife name Hamidah bte A Ghani KP: 741126-10-5296 and staying at room 0917, Crystal Crown Habour View Hotel, Pelabuhan Kelang, Kelang, Selangor. And therefore you have breached reg 4[2][d] Public Officers (Conduct and Discipline) Regulations 1993 which is as follows:-

4[2] An officer shall not —

[d] act in such manner as to tarnish or smear the name of the public service of the Police Force.

2.4 FOURTH GROUND

That you as an officer that is Chief Inspector of the Royal Police Force of Malaysia and serving as a Disciplinary Officer, of the Kelang Head Quarters, Selangor have been found to disobey an order which is using and owning a car model Proton Perdana registration no. WEF 7667 without the Department's authorization as the permanent Direction Order of the Inspector General of Police A 207 Para III. And therefore you have breached reg 4[2][i] Public Officer (Conduct and Discipline) Regulations 1993 which is as follows:

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

2.5 FIFTH GROUND

That you as an officer that is Chief Inspector of Royal Police Force of Malaysia and serving as a Disciplinary Officer, at the Kelang Head Quarters, Selangor have been found disobeying an order by failing to declare your additional assets which is Proton Perdana registration No. WEF 7667 consistent with Para II Services Circular Bil. 8/95. And therefore you have breached reg 4[2][i] Public Officers (Conduct and Discipline) Regulations 1993 which is as follows:

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

2.6 SIXTH GROUND

That you as an officer that is Chief Inspector of Royal Police Force of Malaysia and serving as a Disciplinary Officer, Kelang Head Quarters, Selangor have been found disobeying an order by using and owning Proton Wira No. WFC 778 without the Department Approval as under Direct Order of the Inspector General of Police Order 207 Para III. And therefore you have breached reg 4[2][i] Public Officers (Conduct and Discipline) Regulations 1993 which is as follows:

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

2.7 SEVENTH GROUND

That you as an officer that is Chief Inspector of Royal Police Force of Malaysia and serving as a Disciplinary Officer, of the Kelang Head Quarters, Selangor have been found disobeying an order by failing to declare additional assets of which is a car model Proton Wira No. WFC 778 as Para II Services Circular Bil. 8/95. And therefore you have breached reg 4[2][i] Public Officers (Conduct and Discipline) Regulations 1993 which is as follows:

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

2.8 EIGHTH GROUND

That you as an officer that is Chief Inspector of the Royal Police Force of Malaysia and serving as a Disciplinary Officer, Head Quarters Kelang, Selangor have been found disobeying an order by failing to declare additional

asset which is a house No. 86, Jalan Demang 8, Taman Shah Bandaraya, Jalan Jawa, Kelang, Selangor as Para II Services Circular Bil. 8/95. And therefore you have breached reg 4[2][i] Public Officers (Conduct and Discipline) Regulations 1993 which is as follows:

4[2] An officer shall not —

[i] disobey an order or act in any manner which can be interpreted rationally as disobeying an order.

3 You are requested to submit a written reply within 25 days from the date of this letter through the Chief Inspector of Selangor stating the reasons to discharge yourself.

4 If your representation letter is not received within that period the Inspector General of Police will consider and decide a punishment on you.

5 Kindly acknowledge receipt of this letter by signing at the space provided.

Sgd

[SULAIMAN BIN HJ MOHD YUSOF] SAC II

bp Ketua Polis Negara

POLIS DIRAJA MALAYSIA

[4] Particular attention is to be given to the paragraphs as underlined above. The plaintiff acknowledged the receipt of the letter. The issue posed before the court is whether the procedure leading to the dismissal of the plaintiff was in accordance with the rules of natural justice or procedural fairness. The issue is predicated on the following grounds:

(a) the plaintiff ought to have been afforded an oral hearing in the circumstances of the case;

(b) the defendant is under a duty to act fairly towards the plaintiff in relation to the dismissal;

(c) the defendant is not to take into account matters that have not first been put to the plaintiff with the opportunity for him to rebut;

(d) the plaintiff has been dismissed as a result of false charges.

[5] Reference has also been made by learned counsel for the plaintiff to the provisions of art 135(2) of the Federal Constitution which states:

No member of the public service shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

[6] In *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152, Raja Azlan Shah FJ (as HRH then was) stated:

…

In my opinion, the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled 'judicial', 'quasi-judicial', or 'administrative' or whether or not the enabling statute makes provision for a hearing. But the hearing may take many forms and strict insistence upon an inexorable right to the traditional courtroom procedure can lead to a virtual administrative breakdown. That is because a formal hearing is too slow, too technical and too costly. Lord Shaw's caveat on administrative adjudication that 'judicial methods may … be entirely unsuitable, and produce delays, expenses, and public and private injury' is too well-known to be side-stepped: see *Local Government Board v Arlidge*. In the last analysis, it depends on the subject-matter. The great need is to deal efficiently and fairly, rather than to preserve all the accoutrements of the courtroom; the considerations of basic fairness are paramount. A passage from the judgment of Lord Denning MR in *R v Gaming Board for Great Britain*, *ex parte Benaim* and *Khaida*, is apt:

> It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter: see what Tucker LJ said in *Russell v Norfolk (Duke of)* [1949] 1 All ER 109, 118 and Lord Upjohn in *Durayappah v Fernando* [1967] 2 AC 337, 349. At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge v Baldwin* [1964] AC 40. At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. *Reg v Metropolitan Police Commissioner, Ex parte Parker* [1953] 1 WLR 1150 and *Nakkuda Ali v Jayaratne* [1951] AC 66 are no longer authority for any such proposition. See what Lord Reid and Lord Hodson said about them in *Ridge v Baldwin* [1964] AC 40, 77-79, 133.

And in the following passage he said this:

> It follows, I think, that the board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in the sub-section. They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office, as in *Ridge v Baldwin* [1964] AC 40; or depriving him of his property, as in *Cooper v Wandsworth Board of Works* (1863) 14 CBNS 180.

In this connection, it is well to remember the distinction between a judicial decision and an administrative decision. In the former the rights of the parties are in issue; the public interest is irrelevant. In the latter the public interest plays an important part. The point is, to what extent are private interests to be subordinated to the public interest: see *R v Secretary of State for Environment*.

[7] The plaintiff submitted a lengthy reply dated 2 May 2000 reproduced below in its translated text. The original is in Bahasa Malaysia exh P2.

Yang Berbahagia

Tan Sri Norian B Mai

Ketua Polis Negara

Ibu Pejabat Negara

Ibu Pejabat Polis DiRaja Malaysia

Bukit Aman, Kuala Lumpur

(Through: Selangor Chief Police)

Re: DISCIPLINARY ACTION UNDER REGULATION 28 PUBLIC OFFICER (CONDUCT AND DISCIPLINE) REGULATIONS 1993

Allow me to refer the above to Tan Sri.

2 For Tan Sri's information, I have received accusation letter from Tan Sri's side and understand the content thereof whereby a disciplinary action with the purpose of carrying out the punishment of dismissal under reg 28 Public Officer (Conduct and Discipline) Regulations 1993 could be preferred against me. In relations to that I enclosed herein my representation denying all the accusations made.

(Emphasis added)

Before I explain one by one the disciplinary accusations preferred against me, I would like to explain how this incident could happen against me and my family. For Tan Sri's information, I have known my ex-wife for very long that is since she was in school, that is in the year 1993. She is the daughter of one of the officers of the Klang Police station. My parents came to know about our relationship. My parents knew about our relationship and in the year 1995, my father asked me to get married fast because he was afraid of the accusations or that people might look down upon us. At first, I was not ready because my wife was very young at that time (19 years). Due to pressure from both sides of the family, we got married in the year 1996. At first, I stayed together with my ex- wife's family and later we rented a house near my ex-wife's family house. At that time the changes in my wife started to be apparent, she started to want to mix freely with her ex-schoolmates and colleagues without caring about our marriage.

Tan Sri, I am not trying to cry out my dissatisfaction but this is what had happened in reality. Her bad behavior of coming home late at night and ignoring her own child. I had even informed her parents but she will only listen to their advise for a short period, then she will repeat with her behavior. My child only received love and care from others that is my ex-wife's sister who would take care of my child when my wife goes out at night. I went through this suffering for a very long time Tan Sri. I have narrated this to my parents but they asked me to be patient. I too have advised my ex-wife many times but she did not want to listen and we will always argue and fight. I have been thrown by some hard objects several times and my hand has been bitten and the scars remain until today.

I have never reported this matter because I was ashamed because our families are also police officers. However I did inform the Ketua Bahagian Pengurusan about my problems and he advised me to be patient and not to take any irrational action.

After being patient with my wife's habits, in February 1999, I divorced my ex-wife for our benefit and before anything unpleasant happened.

Tan Sri, actually I did not want this to happen. After thinking more deeply and leaving it to God, I made the decision to separate. At that time it was very difficult for me to do it because I have a child and now I can only see my child once a week. I apologise if what I did was wrong. For your information Tan Sri, my divorce and my second marriage is not because of a third party or as what the department thinks that I like to fool around. Actually what I did was for the benefit of all parties. For Tan Sri's information, my ex-wife and my wife's ex-husband got married at the same date as my marriage. This is all God's will. If I am dismissed from work, how am I to support my earlier child and present child? I hope that Tan Sri will sympathize with my family and me.

4 Now allow me to explain to you, Tan Sri, one by one the accusations against me.

4.1 First Reason

As stated in the letter from Tan Sri's side, I have been accused of having an intimate relationship with Hamidah Bt Abdul Ghani that is my present wife from between the middle of 1998 until February 1999. For Tan Sri's information, I would like to say that I wish to deny the accusation that I had an intimate relationship with Hamidah Bt Abdul Ghani. For your knowledge Tan Sri, I admit knowing Hamidah Bt Abdul Ghani. We have known each other for very long but to the extent of being normal friends and not more than that. It is wrong for me to get to know or befriend a married woman? If my act is wrong it looks like all married women should not work and mix around with men as the country's social status presently is. For Tan Sri's information, throughout our friendship, we have never gone out together alone. We always meet but accompanied by her friends or my friends who are always together with me. Our meetings are not on the basis of love but merely chit chatting about business opportunity and sometimes to discuss about the economic problems and the country.

I understand that I have a wife but I have never betrayed her even though at that time we did not have a close relationship. I have brought my ex-wife to dine with Hamidah and her friends. If I had an intimate relationship with Hamidah is it logical that I would be brave to bring my wife to meet Hamidah. As for the forces motto that says 'Mesra Bersama Rakyat', is it wrong to befriend someone from the opposite sex? In my opinion, our relationship as friends at that time did not tarnish the name of the public services because our relationship was professional. Tan Sri do not judge someone's personality just because they have a friend who is married or someone's husband or wife.

For Tan Sri's information, the relationship between me and my now wife Hamidah Bt Abdul Ghani became more intimate only after we became divorcees at that time, this I do not dispute. We became intimate and loved each other after our divorce. Again I, would like to ask Tan Sri, is it wrong for me to love someone after my heart is made empty and dissappointed by a woman [my ex-wife]. Our relationship is honest and sincere and not only just to fulfill our desires. Our close relationship received blessings from both our parents.

4.2 Second Reason

4.2.1 As what is known to Tan Sri, I married Hamidah Bt Ghani on 16th June 1999. For Tan Sri's information, I sent an application to marry for the second time to Bukit Aman for the purposes of checking the criminal records on 11 June 1999. Only on 19 June, 1999 Bukit Aman that is Bahagian Rekod Jenayah confirmed that my wife did not have any record. On the same day, Timbalan Ketua Polis Daerah Klang that is SUPT Azmi b Hj. Hashim approved my application and then my application was sent to Ibu pejabat Polis Kontijen Selangor to get the approval and only on 22 Jun 1999 Timbalan Ketua Polis Selangor, Dato Jonar b Che Din approved my application.

4.2.2 Tan Sri I did not purposely disobey orders as per order KPN 39/97 dated 30 May 1977. Actually I planned to get married at the end of 1999 but my family ordered me to get married as fast, as possible and according to my family, which was of Javanese descendant opined that 19 Jun 1999 was a most suitable date to have ceremony to those who wants to get married because it is a day that gives harmony and good to those who get married on that day. I did not wish to believe it but sometimes the elders' advise need to be adhered to and obeyed for our benefit because they know better.

4.2.3 Besides that Tan Sri, I got married early to avoid problems that may occur because my ex-wife had said that she wanted to cause problem during our wedding ceremony if she knows the date of the wedding. I did this to avoid the community from looking down upon my relationship with my wife. Good things should be done early to avoid unnecessary things from occurring. The issue on religion, law and rules are equally important if done with a good intention.

4.2.4 Enclose herewith a copy of the application and approval to marry for the second time as in 'Appendix A'.

4.3 Third Reason

Tan Sri, the accusation that states that I was with another person's wife [Hamidah bt A Ghani] on the night of 5 June 1998 until 6 Jun 1998 at 0700 hrs staying at room number 0917, Hotel Crystal Crown, Pelabuhan Klang is not true at all. For Tan Sri's information on the night that is on 6 June, 1998 at 0030 hrs I did meet Hamidah together with her friend named Ida, Anis and Fazli at Sunway Disco. After going to the disco that night, we went to Klang to eat roti canai. It was 0200 hrs at the time, after eating Fazli, our friend and I sent Anis to her house in Taman Sri Andalas. After that Fazli and I sent Hamidah and her friend Ida who is her husband's

colleague to Hotel Crystal Crown because they were afraid to go home because it was already late night and furthermore Hamidah's husband were not at home. I sent Hamidah and Ida to the hotel's lobby only. After that I went straight back home and slept at home with my ex-wife who had just came back home from a disco with her friend.

For Tan Sri's information, I could not have wanted to sleep in the hotel room, because Hamidah's friend, Ida was with her. Ida is her husband's colleague and always get a left to work from her ex-husband. Is it reasonable for me to do such a thing if I wish to sleep with her [Hamidah bt A Ghani] as per the accusation. It will be irrational of me to show off to a close friend of her husband, have I lost my mind?

(i) Tan Sri, the purpose I sent her [Hamidah bt A Ghani] to the hotel is not with a wrong intention. My intention was good because I was worried about their safety and to avoid the wrong perception of Hamidah's neighbour. For Tan Sri's information I have discussed, this issue with Hamidah's parents and also with Hamidah's ex-husband. Hamidah's parents understand about her ex-husband's misunderstanding.

(ii) Tan Sri, the accusation is possibly from Hamidah's ex-husband's plan for the purpose of taking revenge on me who thinks the divorce was because of me. However actually it is due to husband's own attitude who is always hot tempered and always beats Hamidah.

For Tan Sri's information, before Hamidah became my wife this issue arose due to Ida who made up a story to make Hamidah's ex-husband more angry towards Hamidah because actually Ida had a heart for her ex-husband whereby Hamidah came to know that her ex-husband has gone out together with Ida without her knowledge. All these was exposed after the divorce.

(iii) Therefore, I would like to say that I never had the ill-will or planned or had the intention to tarnish the name of the force. All that was done was to save the name of someone's reputation.

4.4 Fourth/Fifth Reason

Tan Sri, the fourth and fifth reason, I admit I did not declare my assets and used or owned a car model Proton Perdana registration No. WEF 7667 without the Department's approval. Tan Sri, I would like to say again that it is not my intention not to inform the force but at that time I just got married for the second time and was busy with my daily work until I forgot to perform my responsibilities in this matter.

For Tan Sri's information earlier when I first started using a vehicle that is Proton registration No JCM 41, I did inform and obtained the approval from the Department to use and own the said car. It is not that I have never inform the Department or tried to disobey orders, it is just that at the time

I was using this car I am using (Proton Perdana WEF 7667), I just started my new family. Therefore I apologize and promise that I will declare my assets immediately. Enclosed herewith a copy of a form for permission to own/use a vehicle for vehicle WEF 7667 as per APPENDIX 'B'.

4.5 Sixth/Seventh Reason

Tan Sri, as per Tan Sri's accusation in the sixth and seventh reason. I feel I have not disobeyed orders in this matter because the vehicle with the registration No. WFC 778 is not owned by me or registered under my name. If Tan Sri's party observes WFC 778 the motorcar's grant, it is under someone else's name and how am I suppose to declare the additional asset as mine according to reg 4(2)(i) Public Officers (Conduct and Discipline) Regulation) 1993. And for Tan Sri's information I seldom drive the car. My ex-wife always drives the vehicle for her daily chores. I only drive other vehicles lent to me by my friends. The car was only given to me only after we were in the process of getting a divorce and the car was a total wreck because it was involved in an accident whilst it was driven by my ex-wife. Tan Sri, how am I going to apply for approval for using vehicle WCF 778 if I myself did not drive the vehicle. I apologise to Tan Sri because I really did not know if the vehicle belongs to my wife it has to be declared. I promise to Tan Sri that I will declare this vehicle as fast as possible in the near future.

4.6 Eighth Reason

Tan Sri, for the accusation as per stated in the eighth reason. I admit that I failed to declare an additional asset that is a house addressed at No. 86, Jalan Demang 8, Taman Syah Bandaraya, Jalan Kampung Jawa, Klang. It is a single storey terrace house in the Malay reserve land. It is not a house that can be classified as an expensive house. Again I apologise for not declaring the additional asset because at that time my life was really in a mess and I did not follow the Department's rules as ordered. I promise that I will follow and perform my responsibilities in this matter.

For Tan Sri's information, I now live in a peaceful and happy family. Since I started my new family, my soul is peaceful and I am able to perform better and efficiently in my daily work. Therefore my humbly request to Tan Sri, if you could apologise me and drop the charges for the mistakes I have done. I now have a child from this marriage. Therefore I now have a new responsibility that I have to bear and perform as a father. If I am dismissed from work, my family's life and mine will be in a mess, how am I going to support my family and my earlier child. I hope Tan Sri will consider this matter rationally.

For Tan Sri's information, my wife's ex-husband and my ex-wife have their own family now. So I feel all these happened and is decided by 'Allah SWT in his Qada and Qadar.' For all that happened there must be a good reason behind it. Therefore I hope that you will forgive me and I have came to know that if action is taken against me, my ex-father in law wishes to take this opportunity to take away my step child in court. Therefore I hope that Tan Sri will forgive me of the mistake that I have done.

Thank you.

SGD

(AZMAN B ABD JALIL) C/INSP PEGAWAI TATATERTIB

IPD KLANG

[8] It may be noted that in the lengthy response the plaintiff was in effect putting forth his explanation with regard to the allegations of misconduct. The eight reasons furnished were clearly intended to address the grounds stated in exh P1.

[9] The Federal Court in the recent case of *Public Services Commission Malaysia & Anor* [2008] 6 MLJ 1; [2008] 6 CLJ 573 has given approbation for certain principles expressed in the Federal Court case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang v Utra Badi a/l K Perumal* [2001] 2 MLJ 417. The specific one to be referred here is that the regulations in detailing the procedures therein have sufficiently complied with art 135(2) of the Federal Constitution and in the process are in accord with the concept of natural justice and procedural fairness.

[10] It is trite that the plaintiff is bound by their statement of claim and in summary the plaintiff is alleging that (i) he has not been given a reasonable opportunity to be heard and that (ii) the charges against him are patently false.

[11] It is to be noted however that the Public Officers (Conduct and Discipline) Regulations 1993 have been amended on several occasions and the reference hereinafter to the provision of reg 28 of those Regulations are the provisions before certain amendments were made in 2002. The relevant provisions state:

28(1)The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a prima facie case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

(2) Where, after considering the representation made pursuant to subregulation (1), the appropriate Disciplinary Authority is of the

A opinion that the breach of discipline of misconduct by the officer does not merit the punishment of dismissal or reduction in rank, the appropriate Disciplinary Authority may impose on the officer any lesser punishment as it deems fit and proper.

B (3) If the officer does not furnish any representation within the period specified in subregulation (1), or if the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

C (4) Where the appropriate Disciplinary Authority is of the opinion that the case against the officer requires further clarification, the Disciplinary Authority may appoint a Committee of Investigation comprising not less than two government officers who are senior to the officer under investigation.

D (5) The Head of Department of the officer under investigation shall not be a member of the Committee appointed under subregulation (4).

(6) The Committee of Investigation appointed under subregulation (4) —

E (a) shall inform the officer of the date when the question of his dismissal or reduction in rank will be brought before the Committee of Investigation and, if the Committee of Investigation is of the view that the officer be allowed to appear, that he shall present himself before the Committee to exculpate himself; and

F (b) may call and examine witnesses or take any such action as it thinks necessary and proper for obtaining further clarification regarding the case.

G (7) If witnesses are called and examined by the Committee of Investigation, the officer shall be given the opportunity to be present and to question the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

H (8) The Committee of Investigation may permit the Government or the officer to be represented by an officer in the public service or, in exceptional cases, by an advocate and solicitor and, subject to any reasonable and necessary adjournment to enable the officer himself to present his case in person, the Committee of Investigation may I withdraw such permission at any time:

Provided that where the Committee of Investigation permits the Government to be represented, it shall also permit the officer to be similarly represented.

(9) …

(10) …

(11) …

(12) …

[12] The claim that he has not been given a reasonable opportunity to be heard is to be considered in the circumstances of the case. This was not a case where an inquiry was conducted and oral representations were made. In exh P1 the letter has made specific reference to reg 28 where it is stated that the IGP has received a report from a disciplinary committee and after considering the report the IGP has found that the plaintiff should be subject to disciplinary action with the intention of preferring the punishment of dismissal under reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 ('GO Cap D 1993'). In exh P2 the plaintiff has also made a clear reference to reg 28 wherein in para 2 he has stated in its original text that he clearly understood the contents whereby a disciplinary action with the purpose of carrying out the punishment of dismissal under reg 28 of the GO Cap D 1993 could be preferred against him. He then stated that he was enclosing his representations. Pursuant to this a letter dated 15 July 2000 exh P3 was sent to the plaintiff which stated that the IGP after considering the representation had decided that the plaintiff was guilty of the first, second, third, fourth, fifth and eighth ground but was acquitted of the sixth and seventh. Exhibit P3 also showed that a reference was further made to reg 38 of the Cap D 1993 which indicated that various forms of punishment could be considered. Exhibit P3 indicated that the plaintiff was to be given a chance to *submit an appeal in mitigation* before the IGP carries out a punishment.

[13] The contents of exh P3 indicate that the plaintiff was found guilty of various acts of misconduct but negate the specific contention of the plaintiff that the IGP had made up his mind from the outset to have him dismissed. Paragraph 3 is reflective of that the fact that various forms of dismissal could be imposed and in para 4 the plaintiff was being given the opportunity to submit a plea as follows:

> 4. Sebelum Ketua Polis Negara menjatuhkan hukuman, anda dengan ini diberi peluang merayu (to make plea in mitigation). Rayuan anda hendaklah dikemukakan kepada Ketua Polis Negara melalui Ketua Polis Selangor dalam tempoh (21) hari dari tarikh anda menerima surat ini. Sekiranya anda tidak membuat rayuan anda dalam tempoh yang ditetapkan, anda dianggap tidak hendak merayu dan Ketua Polis Negara akan terus memutuskan hukuman sewajarnya ke atas anda.

[14] In response to exh P3 the plaintiff sent the letter dated 2 August 2000, exh P4 which from the contents indicated his plea where he urged upon the IGP not to dismiss him. Exhibit P4 also gave further explanation about his former wife. The contents of exh P4 contained, inter alia, the following:

> *Oleh itu saya sekali lagi memohon jasa baik Yang Berbahagia Tan Sri agar dapat memaafkan perbuatan serta kesilapan yang saya lakukan dan meringankan hukuman yang bakal dijatuhkan terhadap diri saya.*

[15] Noted however is that together with exh P4 the plaintiff had apparently appended 2 copies of letters written by one Azman Shah (the former husband of his current wife Hamidah bt Abdul Ghani). Paragraph 2 of exh P4 states, 'Saya telah menerima surat hukuman yang dijatuhkan'.

[16] Exhibit P4 was responded to in exh P7 the letter dated 6 October 2000. Factually this is the letter that meted out the punishment for the various misconduct. In that sense it is totally inaccurate to refer to exh P3 as the letter of 'hukuman' which if translated means punishment. Paragraph 2 of exh P7 also states, 'Saya juga diarah memaklumkan bahawa Ketua Polis Negara telah menimbangkan rayuan anda dengan teliti dan saksama'. Exhibits P1, P3, P7 are letters written to the plaintiff.

[17] These letters constitute the steps taken pursuant to reg 28 of the GO Cap D 1993. Paragraph (1) of reg 28 requires the disciplinary authority, in considering a case where the breach of discipline complained of has been found to be one which merits a punishment of dismissal or reduction in rank, to consider all available information *and where it appears that there is a prima facie case against the officer for dismissal or reduction in rank*, the disciplinary authority shall direct that a statement containing the facts of the breach of disciplined alleged to have been committed and any proposed ground on which the officer is to be dismissed or reduced in rank, to be sent to the officer and to call upon him to make a written representation with grounds upon which he relies to exculpate himself within a period of not less than 21 days from the date of receipt of the charge. Through the letters exhs P1, P3, P7 it is found that there is due compliance with paras (1), (2), (3) of reg 28 of the GO Cap D 1993.

[18] The issue to be dealt with is the contention of the plaintiff that he has not been given a reasonable opportunity of being heard.

[19] This contention is grounded upon the fact that there were the two letters from one Azman Shah exh ID5 and 6 and subsequently exh P5 and exh P6 respectively. Related to this argument is the reliance upon the evidence of PW2/SP2 who stated that sometime in August 2000 a person by the name

of Azman Shah bin Abdul Murad had been at Klang Police Station where he, PW2 had been serving. According to PW2 Azman Shah had purportedly told PW2 that he, Azman Shah had made a mistake and that he wanted PW2 to know the truth and according to PW2 Azman Shah looked remorseful. According to PW2 both letters ID5 and 6 were written by Azman Shah personally in his presence and both were dated 1 August 2000. PW2 in his evidence could not recall whether he sent the original copies of ID5 and ID6 to Bukit Aman. Instead he said that he sent copies to Bukit Aman. He also could not recall whether he gave copies or originals to the plaintiff. It is obvious that the object of introducing ID5 and ID6 which were subsequently admitted as exh P5 and exh P6 were intended to show that there are reasons to exculpate the plaintiff from the alleged intimate relationship with the former wife of Azman Shah. However various observations may be made with this aspect of the plaintiff's case.

[20] Firstly the evidence that was introduced did not assist in supporting the statement of claim. It was a subtle attempt to go beyond what has been averred in the statement of claim. The plaintiff alleged that in the reply dated 3 May 2000 exh P2 which he had sent he was only able to answer the charges partially incompletely and from memory. He then went to allege that he must be given investigation papers. The charges according to him were vague and had acted on false and inaccurate information. He alleged that the matter had been prejudged and that the defendants did not consider relevant circumstances nor alternative punishments.

[21] As stated above paragraph exh P2 a letter written by the plaintiff in his own words said, inter alia, that he understood [memahami segala isi kandungan] the contents of exh P1. There was no suggestion that he had misunderstood the charges where he gave a long explanation about his relationship with his former wife whom he had divorced in 1999. He married Hamidah bt Abdul Ghani the former wife of Azman Shah with whom he was charged with having an intimate relationship in 19 June 1999. His application for a second marriage was dated 14 June 1999. The approval according to the form was given on 22 June 1999. Exhibit P2 as indicated above also stated other reasons.

[22] The second aspect is the extent to which the evidence of PW2 could be described as a corroboration of the plaintiff's case that the charges were patently false. PW2's evidence constitutes his own opinion that Azman Shah was remorseful. The probative value of exh P5 and exh P6 are doubted considering that they were supposed to have been written on 1 August 2000 namely *after* the decision was communicated that the plaintiff was guilty of misconduct vide exh P3.

[23] Additionally, while exh P5 and exh P6 may have been admitted in the absence of objections from the senior federal counsel exh P5 and exh P6 are still in the nature of secondary documents. Exhibit P5 and exh P6 are clearly intended by the plaintiff to elucidate further explanation to challenge the allegation that he has been intimate with another persons's spouse. However even if it is relevant the probative value is doubted. PW2 has not given a satisfactory explanation whether the introduction of exh P5 and exh P6 really meet the requirements of s 65(1) para (a)(i), (ii) of the Evidence Act 1950 as follows:

65(1)Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:

(a) when the original is shown or appears to be in the possession or power—

(i) of the person against whom the document is sought to be proved;

(ii) of any person out of reach of or not subject to the process of the court; or

(iii) …

[24] The court also finds the contention of DW2 that certain parts of exh P6 constitute hearsay evidence as tenable.

[25] Before considering another contention of the plaintiff it is relevant to refer to certain decisions rendered by the Federal Court which are found to be definitive of the questions of law applicable. The first decision is found in *Chai Kok Choi v Ketua Polis Negara & Ors* [2008] 1 MLJ 725; [2008] 1 CLJ 113 in which the appellant was also seeking a declaration that his dismissal from the police force was null and void. The High Court allowed the action but the Court of Appeal reversed the decision and hence the appeal. The questions of law considered were:

(i) Is it in accordance with the rules of natural justice that the applicant be denied all the materials contained in the investigation papers whilst the same were supplied to the Inspector General of Police who is the disciplinary authority and whether when there are two conflicting decisions given by the Court of Appeal, should not the later decision prevail over the earlier decision that is to say should not *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131; [2002] 1 CLJ 493 be preferred and accepted in deciding this case rather than *Raja Abdul Malek Muzaffar Shah bin Raja*

Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308; [1995] 1 CLJ 619 a case decided some seven years earlier? A

(ii) Is it within the purview of the court to hold in any particular case that the facts and surrounding circumstances require the disciplinary authority to afford the applicant an oral hearing so as to meet the requirements of procedural fairness when it is obvious that crucial matters in favour of the applicant were not taken into account or considered by the said disciplinary authority in the disciplinary process? B

[3] The learned trial judge found that the respondents had clearly breached all semblance of natural justice. In his grounds of judgment the learned trial judge said: C

> The disciplinary authority had no power to prejudge on the charges and decide for itself that the charges merited only the punishment of dismissal. Having taken such one-sided view the disciplinary authority could not be said to be unbiased. Having made its decision that the plaintiff was entitled only to an acquittal or to the draconian punishment of dismissal without considering the alternative punishment of reduction in rank, the disciplinary authority has clearly not complied with General Order 38 whereby it could have had the choice of any one of seven punishments for consideration. D E

[4] Two main points were considered and dealt with by the Court of Appeal. Firstly, it was the appellant's contention that the manner the three charges were framed had caused confusion in the mind of the appellant. On this contention, the Court of Appeal, referring to the principle established in the case of *Inspector General of Police & Anor v Alan Noor bin Kamat* [1987] 1 LNS 101 said as follows: F

> … a scrutiny of the show cause letter reveals that it is in accordance with the law as laid down in *Inspector-General of Police & Anor v Alan Noor bin Kamat* [1987] 1 LNS 101. Objectively speaking, there is nothing in that letter which would induce confusion in the mind of a reasonable man similarly circumstanced as the respondent. That the respondent was indeed not in a state of confusion comes across from his representation dated 23 May 1995 made to the Inspector-General of Police. G

We fully agree with the ruling made by the Court of Appeal. H

[5] The second point was in respect of an apparent conflict in the earlier decisions of the Court of Appeal namely *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [1995] 1 MLJ 308; [2002] 1 CLJ 493 and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308; [1995] 1 CLJ 619. In the *Ang Seng Wan* case it was held that oral inquiry or hearing ought to have been conducted. In that case certain documents were made available to the disciplinary authority but were not made available to Ang Seng Wan. That failure tantamount to a miscarriage of justice. In the present case the whole investigation papers were given to the I

Disciplinary Authority. But they were not made available to the appellant. As such the appellant contended there was a miscarriage of justice. To that argument the Court of Appeal said:

> On the facts of the case now before us, there was no evidence that the disciplinary authority had acted unfairly towards the respondent. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector General of Police. It is the appellants' case that any document required by the respondent would have been given to him if a request was made to that behalf. Learned counsel for the respondent argued that a request was unnecessary as a matter of law. It is his contention that as a matter of law there is a duty on the appellants to make available to the respondent the documents without a request being made. With respect we cannot accede to this argument. In *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619 this court held that there is no added duty on the disciplinary authority to provide documents without any request being made by the offending officer.

In our view the finding of the Court of Appeal is correct.

[6] …, two questions of law were posed for our consideration in this appeal. In respect of the first question of law, it is of particular importance to remember the well established principle that the rule of precedent shall apply whenever the relevant facts of an earlier case are similar to the relevant facts of a subsequent case and if such situation happens the decision of the earlier case shall be binding on the subsequent case. However, such rule would only apply if the relevant facts of both cases are similar. If the relevant facts are not similar then the earlier decision would be distinguished and as such would not be binding on the subsequent case.

[7] That is exactly the position between the *Ang Seng Wan* case and the *Raja Abdul Malek* case. As can be seen from the judgment of the Court of Appeal, the relevant facts of the two cases are not similar. In the *Ang Seng Wan* case, the document and the service record had been used to determine proper sentence imposed against the police officer. At the High Court hearing, Ang Seng Wan's counsel asked for a copy of the document but was refused. In the *Raja Abdul Malek* case, no document was requested by Raja Abdul Malek at the High Court hearing. Hence, the court held that no document was required to be given to him. It was for that reason the Court of Appeal in this case followed the decision in *Raja Abdul Malek* case because no request for any document was made by the appellant.

[8] We totally agree with the decision of the Court of Appeal. The only material before the High Court was that the investigation papers pertaining to this case had been sent to the Inspector-General of Police and nothing else. There was nothing before the court that whatever contained in the investigation papers had been used adversely against the appellant except perhaps to frame the three charges against him. Hence our answer to the first question is that the *Ang Seng Wan* case is distinguished from the *Raja Abdul Malek* case and the Court of

Appeal had correctly followed the decision in the *Raja Abdul Malek* case as the relevant facts in the instant case are similar to those of *Raja Abdul Malek* case. A

[26] In another instance the Federal Court in *Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573 was considering provisions under the then Public Officers (Conduct and Discipline) (Chapter D) 1980 which have since been superseded by GO Cap D 1993. However, the questions posed before the court are equally pertinent here and are as follows: B C

(i) whether the court could place itself in the shoes of the DA acting under the General Orders in determining whether a particular procedure was fair or not;

(ii) … D

(iii) whether it was the court and not the DA to decide whether the officer had, in his written representation, exculpated himself from the charges preferred against him; and

(iv) whether the DA acting under the General Orders ought to have granted the respondent an opportunity to be heard orally notwithstanding that he did not ask for an oral hearing. E

Held (allowing the appeal): Per Zaki Tun Azmi PCA (now CJ) delivering the judgment of the court: F

(1) According to GOs 24, 25, 26 of the General Orders, the DA is required to first determine whether the disciplinary offence committed by any officer merits a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank. Should the DA decide that he can be punished with dismissal or reduction in rank, the DA is required to send to the officer a statement in writing of the ground/s which it proposes to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter, a representation containing grounds which the officer relies to exculpate himself. Should the DA consider that the case against the officer requires further clarification then it may appoint a Committee of Inquiry ('CI'). This is a decision of the DA and not the officer or the court. At this inquiry the officer will be allowed to appear before it and exculpate himself. Again this is a decision of the DA. The wording of GO 26(6) is sufficiently clear that his right to appear and exculpate himself in person is at the discretion of the CI. (para 22). G H I

(2) GO 26(7) of the General Orders imposes a duty upon the CI to give

A the officer an opportunity to be present and to question any witnesses examined by the CI, if called upon by the CI. It follows that it is never the intention of the legislators to give an officer under disciplinary action the right to give oral evidence. As far as the deceased was concerned, he was given such an opportunity and he did give a very
B lengthy letter explaining in detail why he could not have committed the acts of which he was charged under. He said in his letter that he was prepared to appear before the DA to answer questions that the DA might wish to pose to him. The DA decided from the evidence available to it that it was not necessary to hear the deceased in person. Clearly,
C it was never the intention of the legislators that the courts should step into the shoes of the DA in deciding whether it was fair to the respondent to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it. questions (i) and (iv) should be answered in the negative. (paras 23, 24,
D 25 & 26).

[27] The abovementioned cases have been referred for to the purpose of dealing with the contention of the plaintiff that he has not been given the
E opportunity to submit his case orally or that certain materials were not made available to him. The decisions in those cases further elucidate the position that whatever initial investigations and reports prepared by a disciplinary authority for a prima facie case are not to be equated to the conduct of criminal investigations.

F

[28] In the case before me exh P2 clearly indicated that the plaintiff comprehended what were the matters that were put before him. The contention that he was confused is therefore negated. In exh P4, that is his appeal for mitigation, no mention whatever was made of the need for oral
G hearing. There was also no indication that reports should have been made available to him. And for completeness the lack of evidentiary value to be accorded to exh P5 and exh P6 also result in the plaintiff failing to establish that the first charge against him is patently false. The contents are hearsay and no explanation was given why the author of the letter could not give evidence
H in person.

[29] DW2 in his evidence explained that he had received three complaints that were addressed to him directly. The report submitted to him had been prepared by DW1 after which DW2 made a determination that a prima facie
I case had been made out. Nowhere in evidence has it been revealed that the plaintiff has made any request for the intial complaints nor the reports. The plaintiff himself had testified that certain statements were taken from him. Both DW1 and DW2 had disclosed the steps taken which were in consonance with reg 28(1), (2), (3) of the General Orders Cap D 1993.

There is no evidence before this court to show that there was anything that would render the procedure undertaken by the first and second defendants to be not in accordance with the requirements of reg 28(1), (2), (3). Moreover on the evidence this court is not to step into the shoes of the authority to determine that a committee of inquiry should be constituted to get further clarification when the plaintiff tendered exh P5 and exh P6. DW2 had himself explained the reasons why he could not take into account exh P5 and exh P6 namely that he had before him sufficient material to enable him to make a decision. This court is not in a position to put itself in the shoes of the disciplinary authority to state that the reasons given by the plaintiff are adequate for the purpose of the charges preferred against him.

[30] With regard to the punishment meted out it is not necessary to repeat what has been oft cited in *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153 that the court is also not to substitute its own views as to the appropriate penalty for an employee's misconduct.

[31] In the light of the aforementioned it is found that the plaintiff has failed to establish its case on a balance of probabilities. The orders that are prayed for are consequentially dismissed with costs.

Plaintiff's application dismissed with costs.

Reported by Ashgar Ali Ali Mohamed